

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALFREDO HERNANDEZ-AGUILAR,

Defendant.

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8:05CR407

ORDER

This matter is before the court following an order issued by the Eighth Circuit Court of Appeals wherein the Eighth Circuit has remanded the case for failure of the defendant to file a certificate of appealability pursuant to [Tiedeman v. Benson, 122 F.3d 518 \(8<sup>th</sup> Cir. 1997\)](#). Filing No. [84](#). Pursuant to Fed. R. App. P. 22(b) a person appealing a ruling under [28 U.S.C. § 2255](#) must file a certificate of appealability. If such request is denied by the district court, the applicant can file the request with the court of appeals. *Id.* “The district clerk must send the certificate or statement to the court of appeals with the notice of appeal and the file of the district-court proceedings.” *Id.* See also [28 U.S.C. § 2253](#). Because no certificate of appealability was sent to the Eighth Circuit, the case has been remanded to this court. Accordingly, the defendant must file a certificate of appealability with this court and the court must rule on the same prior to permitting the appeal.

THEREFORE, IT IS ORDERED that defendant Alfredo Hernandez-Aguilar’s has 30 days from the date of this order to file a certificate of appealability. Failure to do so will result in dismissal of his appeal.

DATED this 25<sup>th</sup> day of September, 2008.

BY THE COURT:

s/ Joseph F. Bataillon  
Chief United States District Judge